The Atlantic City Session

The 1935 Atlantic City session of the American Medical Association House of Delegates held June 11 to 15 was somewhat apathetic as compared with previous sessions in recent years. This was perhaps due to the fact that the action taken at Chicago had deprived the membership of much argument and debate on a subject of vital interest to all.

A curtain of gloom somewhat overshadowed the otherwise peppy atmosphere of the opening session of the House by the announcement that Speaker Warnshuis had unexpectedly suffered the loss of his oldest son. This necessitated his absence until the second session on Tuesday morning.

Despite the apathetic atmosphere there were, however, some interesting things presented of interest to the entire profession. . . .

An interesting sidelight to an otherwise apathetic house was the query by the "stand pat" Republicans of Massachusetts through their good-natured bewhiskered delegate, Dr. C. E. Mongan, who requested that the representatives of the California State Medical Association explain its action relative to health insurance. Doctor Kelly, chairman of the Council of the California State Medical Association, gave a very able and clear explanation. It appeared from his talk that the action of the California State Medical Association was a political expedient, necessitated by the situation that exists in California. His explanation was apparently well received by the House, but subsequent transactions made it appear that California was spanked for its actions. Doctor Kelly's explanation was not published in the transactions of the executive session, but copy and a complete explanation of California's actions have been prepared by the California State Medical Association in the form of a reprint and can be had upon request by addressing Secretary Warnshuis at San Francisco.

Dr. G. R. Leland, Director of Bureau of Medical Economics, presented a special report which was referred to the Reference Committee on Medical Economics without reading. Copies of this report were distributed to the membership and contain recommendations to state and county societies on sickness insurance. It was recommended as a final action of the House that counties, attempting to develop plans, do so with the utmost care and study and that plans be submitted to their respective state organizations for approval before instigation.

The election of officers presented on the surface no excitement, yet one of the most significant changes in more than a decade occurred when Michigan's former secretary, Dr. F. C. Warnshuis, was defeated for the office of speaker by Dr. Nathan B. Van Etten of New York by a vote of 80 to 71. Doctor Van Etten, like his predecessor, is a cultured gentleman of Dutch descent, was vice-speaker for three years and upon various occasions has evidenced able qualifications for this important post.

From the figures you will note that the victory was not so overwhelming, Doctor Van Etten being the victor by but nine votes. It was generally conceded that Doctor Warnshuis' defeat was not due to inability or impartiality, but rather to political expediency. It has been suggested that because of California's action on sickness insurance he might have been reëlected had he remained in Michigan. Yet this argument is quite out of harmony with other events during the election of officers. You are aware that Michigan had a candidate for member of the Board of Trustees in the person of Carl F. Moll, than whom no finer man could be found in any state to grace the dignified table of the Board of Trustees. His fairness, ability, and adherence to the sound principles of organized medicine stamp him as timber without a flaw. Although Doctor Moll was not elected to the Board, Doctor Moll in person was not defeated. Apparently he was, as has been suggested in our Journal editorially, simply the goat for an undeserved but effective chastisement to Michigan for its action in presenting certain resolutions at the Cleveland meeting in 1934. Although we were disappointed in defeat we hold no ill will toward the House membership, being convinced that misunderstanding and incorrect opinions will some day be replaced by confidence and consequent vindication. . . .

"AND/OR"*†

Most intelligent laymen regard the jargon of lawyers as an obvious trade trick, a professional pig-Latin calculated to obscure otherwise simple matters and impress clients with the indispensability of their services. Fortunately, most of their pompous verbal mumbo-jumbo is harmless tautology. But at least one legal usage—"and/or"—is dangerous nonsense.

Many a suit at law has hinged on the interpretation of an "and/or." Usually the decision has gone against the drafter who slipped that literary what-not into his contract. An early instance is a case decided in a British court on February 8, 1855. A shipper named Cumming had accepted from a shipowner named Cuthbert a contract to provide one complete cargo of "sugar, molasses and/or other lawful products." After Shipper Cumming had loaded on every puncheon of sugar and molasses the ship would hold, some odd space remained. He left it empty. Owner Cuthbert claimed he should have filled it with "other lawful products," brought suit for £139, 8*s.*, 3 *d.* damages. The trial judge ruled that the ambiguous "and/or" in Owner Cuthbert's contract had rightfully entitled Shipper Cumming to do as he pleased about odd space.

Last winter Virginia's Carter Glass, as chairman of the Senate Appropriations Committee, found the Relief bill shot through with such befuddling phrases as "The President is authorized . . . to make grants and/or loans and/or contracts." Flying into a fine rage, the peppery little Virginian marched out on the Senate floor, successfully defended his action in striking out "the idiotic expression 'and/or'" wherever it appeared in the bill. To his support Senator Glass summoned an impressive battery of opinion against "and/or."

"It is a bastard," said Lawyer John W. Davis, "sired by Indolence (he by Ignorance) out of Dubiety. Against such let all honest men protest."

"I am delighted," wrote one-time Attorney-General G. W. Wickersham, "that you have taken up the removal of this inaccurate monstrosity of expression from laws passed by the Congress of the United States."

"The expression 'and/or' is a split personality, a grammatical psychopath," declared a Baltimore *Sun* editorial entitled "Grand 'And/Or' Old Carter." "If Senator Carter Glass can succeed in removing it at least from our federal legislation, he will deserve the thanks of a confused and/or harassed populace."

Last week lovers of verbal clarity placed the eldest of the Wisconsin Supreme Court's seven justices on a pedestal beside Senator Glass. Up for decision had been a complex case involving an insurance company which insured "C. D. Brower, Jr., and/or the Sturgeon Bay Company," against liability for accidents except "to any employee of the assured. . . ." Brower was a trucker who had contracted to do a job for Sturgeon. When a Sturgeon employee was injured in a collision with a Brower employee the insurance company tried to wiggle out of paying Brower's damages by arguing that the policy ran jointly and its "and/or" had really meant simple "and."

The decision was written by Justice Chester Almeron Fowler, a handsome, upstanding, straight-thinking gentleman who golfs, fishes, camps, walks two and one-half miles to his office every day and will probably celebrate his seventy-third birthday this week by a brisk game of curling. Famed for his verbal vigor, old Justice Fowler growled in his insurance case decision:

"It is manifest that we are confronted with the task of first construing 'and/or,' that befuddling, nameless thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain of someone too lazy or too dull to express his precise meaning, or too dull to know what he did mean, nor commonly used by lawyers in drafting legal documents, through carelessness or ignorance or as a cunning device to concel rather than express meaning with view to furthering the interest of their clients. We have ever observed the 'thing' in statutes, in the opinions of courts, and in statements in briefs of counsel, some learned and some not."

Ruling flatly against the insurance company, Justice Fowler declared: "If the construction given [by the Court] differs from the meaning actually entertained and intended to be conveyed by the company when it issued its policy, the company has only itself . . . to blame, and it is justly penalized for attempting to express—or perhaps to conceal—the meaning intended by the use of a mere mark on paper."

---

* Reprinted from *Time*, December 23, 1935.

† The California District Court of Appeal opinion denying corporations the right to practice medicine, and printed in this issue, quotes an "and/or" policy. See page 36.